Linn County / [illegible] (Clerical, Professional, Maint, Tech & Paraprof)

2002-2003
CEO's
376, 377,
683, 684
Sector 2

BEFORE
JAMES R. COX
ARBITRATOR

LINN COUNTY

AND

INTEREST ARBITRATION
2003-2004 LABOR AGREEMENT

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES LOCAL 231

DECISION AND AWARD

The Hearing in this matter was conducted by the Arbitrator at the Linn County Courthouse March 31, 2003. Assistant Linn County Attorney Gary Jarvis presented the Employer position while Business Representative Tom Anthony represented the Union. Following presentation of evidence, each Representative made a persuasive closing argument on each of the impasse items.

The dispute was advanced to Arbitration following several negotiation meetings succeeded by a January 9, 2003 Mediation Session and Fact-Finding January 30, 2003. There are no questions of arbitrability and the matter is before me for full and final binding determination.

The Arbitrator has, in accordance with applicable provisions of the Iowa Code selected the most reasonable of the *"final offers"* on each impasse item submitted by the parties or the recommendations of the Fact Finder on those items. These selections and the matters previously agreed upon by Linn County and AFSCME shall constitute the Collective Bargaining Agreement. In reaching my determination, I have combined issues into appropriate impasse items and applied factors set forth in Section 20.22(9).

THE ISSUES

Ten issues on which the parties had reached impasse were submitted to the Arbitrator.

A. Wages including Longevity Pay

The Fact-Finder recommended an across the board increase of 3.25%. He figured that inequity adjustments he recommended would result in an additional .75% wage cost. Another element of the wage impasse issue involves changes in Longevity sought by AFSCME.

The Longevity Pay benefit is set forth in Article 22. The Fact-Finder would change the computation of Longevity Pay remarking that current language was similar "*in its complexities to calculation of vacation pay...*" He commented that the "*same application of determining the basis*

for vacation is appropriate for longevity." He then described a formula for calculation of longevity. The County characterized his recommendation as "*incomprehensible.*"

The Linn County final wage position was 3%. They accepted the inequity adjustments recommended by the Fact Finder and cost those changes in classifications and pay grades higher than the Fact Finder. They set the cost at .96% of total bargaining unit payroll. Their final proposal would make no change in the existing longevity schedule.

The Union, in their final offer, adopted two facets of the Fact-Finder's Wage Report – the 3.25% increase and the specified upgrades. However, in addition to the size of the across the board increase[1], the AFSCME final offer differs from that of Linn County in that they seek to modify the basis upon which longevity pay for full time employees are calculated.

Longevity

The Union and County are not in disagreement on the longevity benefit schedule. Their difference is centered on the fact that current language, as administered, perpetuates a continuing effect upon longevity payments long after the time an employee changes from part-time status to full-time. For example, according to a fact situation described in the County submission, an employee who had been regularly scheduled to work 60 hours per pay period for one year followed by four years of full-time work would, with five years of service (one year part-time and four full-time), be entitled to receive a longevity payment of $475 whereas an employee with five years of full-time employment would have a right to a $500 longevity payment. The diminishing effect on Longevity Payments, a consequence of having worked part time, continues through the fifth year and beyond.

The first sentence of Article 22, Subsection 1c currently provides, among other matters, that, "*employees regularly scheduled for 60 or more hours per pay period at some point during the calendar year and who have completed five years of such employment while continuously employed shall be eligible to receive longevity payments on a prorated basis...*[2]" A formula for a pro ration follows[3]. Subsequent paragraphs of Article 22 set a schedule describing when an employee becomes entitled to benefits based upon continuous service. After completing five years of continuous service, an employee is entitled to a lump sum longevity payment of $500; after ten years, $600; after 15 years, $700; after 20 years, $900; and after 25 years, $1,100.

The Union would delete the pro ration provisions retaining only the first sentence of Article 22, 1c. The effect of the Union's proposal and the retention of that first sentence would mean that the longevity pro ration would be only for payments in the year in which an employee is working part-time. The effect of the pro ration would not be carried forward into years when the employee would be full time. According to AFSCME figures, there were currently 73 part-

[1] There is an approximate $40,000 difference in wages between the County and AFSCME proposals.

[2] Any year of employment that the employee is not at some point in time regularly scheduled for 60 or more hours per pay period does not constitute a year of eligible employment and is not included in the calculation of the longevity payment.

[3] There is a formula that where the number of regularly scheduled hours has remained constant, the regularly scheduled hours per pay period shall be divided by 80 and the quotient multiplied by the longevity payment for a similarly situated full-time employee to determine the longevity payment. Where the number of regularly scheduled hours has varied, the maximum number of regularly scheduled hours in each year of eligible employment shall be divided by 80. The quotient shall then be multiplied by the longevity payment for a similarly situated full-time employee for each year. The product shall then be summed and divided by the years of employment to determine the longevity payment.

time employees in this Bargaining Unit who, if otherwise qualified based upon their years of continuous service, would appear to be subject to pro ration under the Union proposal.

As their example shows, Linn County does count part time years along with full time years in determining the thresholds at which longevity payments are to be made. Language in the current Agreement makes it clear that employees are to receive various longevity payments at the trigger points set forth in Article 22 based upon their years of continuous service –full time and eligible part time. It is clear that years of continuous service for the purposes of Article 22 have been applied to include those years in which an employee is, at the least, regularly scheduled for 60 hours or more per pay period during the calendar year. The problem the Union language addresses here is prorating a longevity benefit for a full time employee because of his/her prior part time service.

The objective of longevity benefits is to reward employees for continuous service - for remaining with the employer. The benefit has cost value for the County and is intended to have an effect on reducing the substantial costs of employee turnover[4]. While it is reasonable for longevity payments to be prorated for a year during which an employee may be working on a part-time basis, there is no justification for penalizing an employee who subsequently becomes full-time by not paying him a full longevity payment. To put it another way, it is not reasonable that a full-time employee who may have been motivated to remain with the employer should not receive the same longevity benefit as other full-time employees only because he had one or more years of prior service as a part timer[5]. In the relatively few comparable counties that do provide longevity pay, the pro ration is effective only for the year in which an employee is employed as a part-timer. There is no continuing effect in comparable contracts. While, as the County correctly points out, longevity is not widely paid among the comparables, that benefit has been a part of the compensation package in this Unit for some time and there is no effort to abolish or limit it.

Wages

At the time of this Arbitration, there have been few comparable external settlements relevant to the outcome here. However, the settlement in the Linn County Sheriff Unit is of significance. While there were no inequity adjustments in the package Linn County bargained with PPME for that Unit, wages were increased 3.5% the first year and 3.75% the second year. That percentage was applied to hourly rates higher, because of the nature of the work, than those paid employees in this Unit. That settlement package included essentially the same insurance package sought here[6] as well as significant additional cost (2.2%) attributed to Step Increases. The Fact Finder's recommendation on wages supports the Union position. Wage increases for excluded employees in Linn County were 4%.

Award

In making my determination on the Wage issue, I recognize that the Parties have resolved a substantial number of inequity issues - upgrading certain classification/pay grades. Following my review of the evidence and arguments of the Parties, I find the most reasonable final position on this Wage issue is that of the Union. Accordingly, wages are to be increased 3.25%, upgrades

[4] Often estimated at one and a half times the replaced employees salary. Turnover figures were not made a part of this Record.

[5] Not every part Timer is covered....only those who work the sixty or more hours per pay period as mentioned in the second paragraph of Article 22, Section 1c.

[6] There would be a relatively greater impact on the AFSCME Unit because of their lower wage scale considering that the insurance changes here primarily require additional employee contributions.

identified in the Fact Finder Report shall become effective and Longevity Pay shall be modified as sought by the Union in their final offer.

B. Hours – Article 17 –Holidays

As the County phrased it, on this issue both parties have a *"common objective"* – to be sure employees scheduled to work shifts longer than 8 hours on holidays not be shorted hours during those holiday weeks.

Currently, flextime during holiday weeks is permitted with Management approval in some Departments covered by the Agreement. The Union seeks new Contract language that would allow all Unit employees to alter their work schedule during holiday weeks without any restriction.

Under AFSCME proposed language, an employee scheduled to work a 10-hour shift on a day upon which a holiday falls would be allowed to decide when to take two hours comp time on other days of the week. Their proposed language reads, *"Article 17, Section 9. For employees scheduled to work anything other than an eight-hour shift on a paid holiday, the employer shall allow the employee to alter his/her shifts during the holiday week."*

Linn County also proposed a new Section 9[7]. *"Notwithstanding the provisions of Article 8, Sections 2 and 3, the Employer will, during work weeks in which a paid holiday is celebrated, alter employee's work schedules, where necessary, to assure that hours worked plus holiday hours paid equal the employees scheduled hours for the week."*

Award

I find the Linn County final position to be most reasonable. That proposal would best provide for orderly rescheduling of work during Holiday weeks based upon operational needs. Scheduling during such a shortened workweek may be of critical importance in maintaining services. There is no evidence that employees have previously been allowed to unilaterally move part of their hours on holiday weeks to another day without management approval. That is what the Union seeks here. The County proposed language shall be added to the Contract.

C. Vacation

The impasse on this issue revolves around a conceptual difference similar to that involved with calculation of longevity pay. Employees who had worked part-time during a calendar year at some time during their career do not have the year(s) they spent as part-timers counted for purposes of determining the amount of vacation time to which they may be entitled under the vacation schedule after they transition to full-time work. Here is an example.

The Union spelled out the vacation entitlement of one employee who was given credit for 12 years of service as of February 1, 2002 and was paid 147.69 hours of prorated vacation. She had been hired February 1, 1989 becoming full-time February 1, 1992. Her first three years had been part-time and, based upon her work schedule, they were calculated as though she had

[7] The existing contract has only 7 subsections in Article 17.

worked two years[8]. Considering the total number of years of service, - both full and part time - she was entitled to 160 hours of vacation under the vacation schedule but was not paid the full 160 hours.

The current Article 18 provides for vacations of various numbers of hours based upon completion of years of continuous service. For example, after 11 years of full time continuous service, an employee is entitled to 160 hours. Following completion of 17 years of continuous service an employee is entitled to 200 hours of vacation pay.

Continuous service, as in the case of longevity, does include service as a part-timer. In the case of those employees whose continuous service includes part-time service, Section 2 of Article 18 gives them the right to have their vacation benefits calculated pursuant to the schedule specified in Section 1 or under Article 25. Article 25 could use some redrafting.

Article 25 first states it deals with certain part-time employees who are regularly scheduled to work less than thirty two hours per pay period (Article 25, Section 1) [9] and then expands Section 1 to also apply to part time employees as defined in Section 4 (those regularly scheduled to work thirty two hours or more per pay period). It provides, in Subsection 1(c), examples of how vacation pay is calculated for those employees who had worked both full time and part-time.

An illustration in Article 25 shows that an employee who worked five years at full-time and two years at part-time (.75 years when regularly scheduled 60 hours per pay period) would have five years plus 1.5 years divided by 7 years times 120 hours or 111.4 hours of *"paid leave"*. An employee who had ten years of regularly scheduled service at 60 hours per pay period and two years at 40 hours per pay period would, using the same formula, have 113.3 hours paid vacation.

Entitlement to vacation compensation under Article 25 is calculated by multiplying the number hours of paid leave such employee would be entitled to as a full-time employee by the proportion of such employee's regularly scheduled hours of work calculated using the employee's regularly scheduled hours of work on each anniversary date to those of a full-time employee.

The Fact-Finder saw inequities in the current system and recommended a process whereby vacation entitlement would be calculated only by the number of years of service.

The Union would delete the provisions of Article 18, Sections 1 and 2 and add a new Article 18, Section 1 under which employees would receive paid vacations based upon their date of hire on an annual basis with the exception that during the first year of service, after six months, an employee might choose to receive half of their paid vacation. Under the Union final offer on this issue, vacation pay would depend upon the employee's length of service as well as the weekly hours he was currently working. Under their proposal, the employee's total number of years of continuous service would determine the amount of paid vacation weeks the employee would receive, but the weekly hours the employee was currently working would determine the amount of paid vacation hours. According to the AFSCME proposed schedule, after six years of service, an employee would receive three weeks of vacation. If he was working 40 hours he would get 120 paid hours; 38 hours of scheduled work would get 114 paid hours; 32 hours would receive 96 paid hours; with 30 hours he would get paid 90 hours; and those working 20 hours would get paid 60 hours. After 16 years under the Union plan, an employee would get five weeks if he were working 40 hours and reduced hours if working a part-time schedule. The current

[8] *She was credited with .50, .75 and .75 of a year.*

[9] There is a different standard than used in the longevity pay language.

language provides that employees do not get the five-week equivalent, 200 hours, until they complete 17 years of continuous service.

The Arbitrator is limited to selecting from the final positions of the Parties and the Fact Finder. On this issue, Linn County adopted the Fact-Finder's recommendation. As they understood the recommendation, there would be a longer wait before part-time hires would be eligible for vacation. They commented that while the vacation entitlement does not progress as uniformly as it does under the current Agreement, "*when years of service credit reach the vacation schedule increment levels, the Fact-Finder's recommendation does allow the employee to receive the full number of hours of vacation at that increment.*"

The Fact-Finder's recommendation would eliminate the continuing reduction in vacation pay arising out of having worked part-time at some time during the employment history. He wrote that an employee "*ten years regularly scheduled for 40 hours per pay period (5 years of service) so that the employee would qualify and received 80 hours of vacation*".

Under the Fact-Finder's recommendation, an employee with five years at full-time and two years working 60 hours per pay period would have 6.5 years for calculation purposes and be at the 120 hour level. Whereas currently he receives vacation pay of 111.40 hours, he would receive 120 hours pay under the Fact Finder Report adopted by the Employer. Under Article 25, an employee with ten years who had been regularly scheduled for 60 hours per pay period and worked two additional years full-time would be entitled to 113.30 hours paid leave under current calculations. Under the Fact-Finder's recommendation, that employee would have more than 6 years and be paid 120 hours.

Under the Union proposal, while there would be pro ration of vacation pay for an employee working as a part-timer during the vacation year, there would be full recognition of past service, full and part time, in reaching the various trigger points on the vacation benefit schedule. This approach, while it does rectify the inequity of being paid a lower number of vacation hours, would accelerate movement up the vacation schedule for purposes of reaching the increment points and provide benefits at the 200 hour level a year sooner that the completion of 17 years presently contained in the Article 18 schedule.

Award

This is a situation where the Arbitrator would prefer not to select either the Union or the Employer final position. However, considering both final positions, the County final position is most reasonable. The current language of Article 18, Section 2 shall be deleted and Article 25 modified in accordance with the Fact Finder's Report to provide that an employee, will not have his vacation pay prorated. Service for purposes of determining the place of the employee on the vacation schedule will be calculated as before but vacation hours to which the employee is entitled based on those years of service will not be prorated. As the County states, "*when years of service credit reach the vacation schedule increment levels, the Fact Finder's recommendation does allow the employee to receive the full number of hours of vacation at that increment.*" The principal objective of both Employer and Union is attained.

D. Insurance

Article 23, group insurance language, presently requires employees to pay $5 per month toward the single contract premium and $12.50 for the family contract premium with the Linn County paying the balance. There is also a very uncommon provision where the employer agrees

to reimburse the employee for policy deductibles – up to a maximum of $100 deductible for the single contract and $200 deductible for the family contract. This constitutes full reimbursement since the deductibles are $100 and $200, respectively. The County proposes to make relatively small adjustments in the monthly amounts employees pay toward the premiums – raising these amounts to $10 for the single contract and $25 for family coverage. They would also delete reimbursement provisions for the deductibles effective January 1, 2004.

The Union would accept the Fact-Finder's recommendation that current Contract language be retained in part. They would liberalize the language with a provision that employees who worked 35 or more hours per week would qualify for full-time insurance benefits and all other benefits would be prorated.

The evidence clearly establishes that Linn County has experienced, along with other Iowa counties, dramatic increases in health insurance costs. They have been self-insured for many years, paying claims from a Fund earmarked for that purpose. Income from investments, however, went into the General Fund and, according to the testimony, the claims reserve is now depleted. Funding was never a matter of negotiations. The focus here is on the County's attempt to offset current increases in costs with increased employee participation.

There is nothing in the Record nor in the Arbitrator's experience comparable to the provision that requires the County to reimburse Bargaining Unit Members for deductibles up to the maximum deductibles, which are $100 for the single contract and $200 for the family contract. The deductibles themselves are reasonable and less than in many comparable Units.

In addition, the County seeks to increase the contribution of Bargaining Unit Members to the contract premium. Such increases would make the employee contribution $10 per month for the single contract premium and $25 per month for the family contract premium. This Bargaining Unit has 145 single contracts and 350 family contracts.

Award

I have considered the substantial insurance cost increases, the trend upward and the long period during which there had been only limited participation by employees in payment of the premium. Against these facts, I have evaluated the alternative final offer of the Union which, in addition to partially adopting the Fact-Finder's position, would also bring part-timers working 35 or more hours per week into "*full-time health insurance benefits*" Currently, only employees regularly scheduled to work half time - 40 or more hours in an 80-hour pay period - are eligible to obtain group health insurance. Part-time employees pay a prorated share of the employer's normal contribution toward the single or family contract for a full-time employee. The cost of providing full-time health insurance to part-timers working 35 hours per week or more would be an additional $24,751. There is no support among the comparables for providing full insurance coverage for employees who work less than half time. The cost effects of such a benefit would be out of step in this period of increasing insurance costs and imprudent to take on at this time.

The Sheriff's Deputy Unit of 97 employees adopted a Contract recognizing the County's increasing insurance costs. In that case, deductibles were increased to $200 on the single and $400 on the family and out-of-pocket maximums from $500 to $650 on the single and from $1,000 to $1,300 on the family contract. As in the present Contract, there were economic improvements that may have been considered in the bargaining on the insurance modifications.

On this issue, the final position of Linn County is most reasonable.

E. Leaves of Absence

There are two aspects of this issue where the parties reached impasse – the current requirement that an employee using sick leave for an absence of three days or less would not have to provide medical substantiation and the restriction on the number of sick days that may be utilized during a single week for family illness that requires the employee's presence.

The doctor slip requirement

Article 16, Section 2(b) currently states that, *"In order to qualify for sick leave benefits, an employee desiring to take a sick leave must, as soon as reasonably possible, notify his or her immediate Supervisor indicating the nature of the illness or injury and the anticipated length of absence....."* The language further reads that any employee abusing the sick leave benefits would be subject to the disciplinary procedures which may include severe discipline such as discharge. This wording follows the statement that *"Employees absent for three days or less due to injury or illness will not be required to submit proof of such illness or injury.* That exemption from submitting proof of illness or injury does not exculpate any employee who abuses the sick leave benefit during those three days.

Current language also allows the employee's Departmental Head or the Board prior to approving sick leave of more than three days to require verification of the employee's condition through a statement from the employee's doctor certifying the employee's disabling sickness or injury or through examination of the employee by a doctor the County may designate. In the latter case, the County would be responsible for the doctor charges.

The County adopts the Fact Find's recommendation that Article 16, section 2(b) be amended to eliminate the requirement that an employee must indicate the nature of the illness or injury when notifying the county of the need to use sick leave and also to eliminate the exemption from being required to submit proof of illness or injury in cases of usage of three days or less. The County would have discretion to require proof of an illness or illness upon which an employee may rely for such a short-term absence to the same extent they now have for longer sick leave use. The County's final position would have the effect of allowing them to require proof of illness or injury even when the absence is less than three days and would also allow a Department Head, when approving sick leave of any period, even for leaves for less than three days, to require verification of the employee's condition. It would be an option.

The Union, in their final position, would accept the elimination of the requirement regarding disclosure of the nature of the illness or injury but would retain the status quo for the remainder of the Section 2b language. They oppose any change in the proof of illness or injury exemption.

The Union is concerned that deletion of the restriction on the employee's right to require a doctor's slip for such short term absences would lead to abuse. Such abuse can be addressed through the grievance procedure. The three-day restriction is not normally part of a Collective Bargaining Agreement and was not shown to be in any comparable Contract.

Sick Leave usage under 2c

Whereas, presently up to a maximum of two work days in any one work week may be covered by sick leave benefits under 2c when the absence is due to a serious illness or injury to a member of the employee's immediate family which requires the employee's presence, under the final position of the County they would adopt the Fact Finder's recommendation and sick leave benefits would be paid up to a maximum of five days in a one week period during the course of one year and, during the remainder of that year, the current two day limitation would remain in effect. The Fact-Finder recommended language that would, as he put it, "*supplant Article 16(2)(c), Subparagraph 3.*".

The Union would delete the two-day limitation on use of family sick leave. The Linn County provision for Sick Leave utilization in the case of immediate family illness or injury is markedly liberal compared with the comparable counties and no justification for more than one week of such coverage each year was presented.

Linn County positions on both aspects of this Leave issue are the most reasonable. I adopt Linn County's final position the Leave issue for reasons set forth above.

F. Shift Differentials

The Parties had agreed upon significant increases in shift differentials but remain at impasse on whether there should be an additional differential of $.50 in the case of LIFTS employees who work a split shift. Employees in this classification start work during morning hours before the time a shift differential would be triggered under their language. Current language explicitly states that, except as provided, there is no premium for shifts starting at 5:00 a.m. or thereafter.

The Union is in agreement with the Fact-Finder's recommendation that the shift premiums be raised from $.10 to $.25 and from $.15 to $.50. The $.25 premium is triggered when the employee's regular shift starts between 12:00 noon and 6:00 p.m. The $.50 premium is triggered when the shift starts after 6:00 p.m. AFSCME requests that, in the case where a LIFTS person works a split shift, they would get the $.50 per hour differential if the first phase of their split was during the morning and the second period of work commenced after 12 p.m. but before 6 p.m.

The County agreed to pay LIFTS employees working split shifts the second shift pay differential, or $.25 per hour. This premium would be for all hours worked.

Award

As noted, the language indicates that a premium at the $.50 level is to be paid based upon work after 6 p.m. Split shift work driving LIFTS does not involve night hours after 6 p.m.

I find the Fact-Finder's recommendation amending Article 8 to be the most reasonable final position. The Parties have declared they construe that language to require those LIFTS employees working split shifts to receive the $.25 per hour premium although the Union seeks an additional .25 cents. That understanding should be expressed in the Agreement. There is no basis for an increase to .50 cents. The inconvenience of working split shifts may be addressed with an inequity adjustment should the Parties mutually agree during their next negotiations.

F. **Overtime and compensatory time.**

Article 9, Section 4, provides an alternative to time and a half pay for hours worked in excess of 40 per week. An employee may elect, "*for each period in which overtime is worked to take the total equivalent time off with pay for such overtime under the following conditions...*" Listed conditions include the employee providing his Department Head with notice that he has elected to take his overtime as comp time and giving that notice to the Department Head on or before the Monday following the work week in which the overtime was worked or the next regularly scheduled work day in the event Monday is a holiday. Such time is accumulated during the Contract year and should be taken prior to June 30th. In the event the comp time is not used before June 30th, overtime shall be paid at the rate of pay in effect when earned. Payment is on the last period preceding the end of the Contract year. The language further allows an employee an election to be paid compensatory time earned at any time during a Contract year. It is significant that the language permits that "*Time off shall be taken at such time or times as may be mutually agreed upon by the employee and the Department Head*".

The County would limit the right of certain employees to elect to take their overtime as comp time. The Linn County proposal is modify Article 9, Section 4, by adding the phrase I have under lined to the first paragraph of Article 9 - "*In the alternative, but with the exception of the employee working in a 24-hour Correctional Facility operation, an employee may elect for such period in which overtime is worked to take the total equivalent time off with pay for such overtime under the following conditions ...*"

The Union proposes that the current language be continued in effect and that there not be any additional restriction on any employees right to take over time as comp time.

According to the evidence, there are two Facilities – the Juvenile Home and the County Correctional Facility – staffed on a 24-hour basis. The Fact-finder characterized the exclusion the employer seeks as justified since in those facilities there is limited staffing and, in such circumstances, allowing employees to use compensatory time as an alternative to overtime payment directly aggravates overtime costs. Manning requirements usually make it necessary to fill vacancies at correctional facilities.

Throughout the Unit, compensatory time may not be taken without supervisory permission. There is no evidence that supervision has completely forbidden use of compensatory time in any Department. In general, the use of compensatory time may be deferred. However, in some Departments, when seven days' notice is given, compensatory time request is granted.

The Arbitrator recognizes that when there is 24-hour staffing or circumstances where it is difficult from an operational standpoint to replace employees, such as in the County Jail, use of comp time may have an adverse overtime consequence. However, there was evidence that in at least some circumstances at the Jail, the Parties have "*worked it out*" when an employee seeks to use comp time for short periods of absence. There is also evidence that the correctional facility had been somewhat understaffed until 2002. There is insufficient evidence as to what overtime hours have been during the past year after staffing was brought up to budgeted levels compared with 2001.

Award

Considering all aspects of this situation, I recommend that the current Contract language be retained. I adopt the Union's final position on this issue.

G. Transfer Procedures

Article 11, Section 8 makes it clear that "*Employees may not bid to the same job classification within their department but may bid to the same classification is a different department*". There is no evidence of any contrary practice. The Article does specifically provide that Secondary Road Department employees may bid within the same job classification to a different District. Road Department locations are geographically separated to a much greater extent than those to which Facilities Workers are assigned. There are no other exceptions in this relatively large unit.

The Union proposes to modify Article 11 and require the Facilities Department to designate the work location on bids they post. The County accepts the Fact-Finder's recommendation that the current Contract language of Article 11, Section 8 not be changed.

All facilities workers have basically the same jobs and responsibilities although, as in any classification, work may be more onerous from assignment to assignment and from location to location. In certain assignments there may be more overtime opportunities and there are provisions for equalizing overtime.

Award

Considering prior practices within this Unit, it is not reasonable that facilities employees be allowed to bid within their same classification to different work locations. I recognize that the County currently does permit part time employees to bid on an assignment within the same classification within the same Department but their bid is spelled out for "*the sole purpose of obtaining full time status*".

Under the Union final proposal, employees would be bidding on assignments. It is not reasonable for employees working in six or seven locations proximate to each other to receive the same accommodation as in the Roads Department where there is a practice of allowing employees to bid on sites.

The final offer of the County on this issue, which provides that current language be retained, is the most reasonable. [10]

I. Evaluation Procedures

The County proposes a new Article 28 that would deal with performance appraisals and read: "*employees and their Supervisors will meet regularly for the purpose of discussing primary job duties and work assignments of the position assigned to the employee and the employee's performance in the position.*" Under their proposal, Supervisors may use the Performance

[10] This Award has no impact on any change in overtime equalization practices if there are any.

Appraisal Forms in place prior to July 1, 2003 or a Performance Appraisal Form identified as becoming effective July 1, 2003.

The Union position is that language should be added to the Agreement banning the use of Performance Evaluations for numerous reasons cited during bargaining and repeated at Arbitration.

The Fact-Finder would continue current practice.

Current performance appraisal practices vary across Departments covered by this Collective Bargaining Agreement. Evaluations for approximately nine employees are completed by an employee who is currently in the Bargaining Unit, but whose supervisory status, according to the Company, is akin to that of an excluded individual. Other Departments use various forms and methods. Some Departments do not conduct any evaluations at all.

As in discipline matters, there is no basis for not treating all employees in the Bargaining Unit with uniformity in the case of performance appraisal. Even the language proposed by the County fails to provide any uniformity since it perpetuates in certain Departments methodology that was used before the effective date of this Agreement. While the Union believes that one of the several alternative methods of employee evaluation might better be adopted than the format proposed for part of the Unit, under current Contract language, there is no restriction on any appraisal method.

The Union is wary of the consequences of instituting a formal evaluation program. They are concerned about the effect of an appraisal upon issues that may involve employee qualification and performance.

Award

I find it is in the interest of both the employer and the employees that each employee be regularly advised of the employer's evaluation of his performance. An unfair evaluation may be grieved and the fact that a procedure is set forth in the Contract does not preclude any employee from challenging it for inaccuracy, disparity or any other reason.

The Union's final position is that the Fact-Finder's status quo recommendation should be adopted. While neither of the Parties' proposals would achieve a desirable uniformity throughout the Unit, the County final offer moves in that direction. There is no justification for banning employee performance evaluations.

As indicated during the Arbitration Hearing, it is good management practice to regularly provide employees with information about their work performance. The Union's concern that the employer would use this language (or the form they purport to utilize) to the detriment of employees is not supported by experience. The language is innocuous and requires only that a discussion of "*primary job duties and work assignments and the employee's performance*" be done at least annually. Such a process alerts the employee to any problems and, in many cases, works to the employee's benefit from a job security standpoint.

Management has an inherent right to make performance appraisals using whatever methods they may adopt. The basic test is whether the appraisals are fair and do not treat employees disparately. The employer is not proposing a system that is inherently unfair. Of course, any appraisal perceived to be unjust may be challenged in the grievance procedure.

The Linn County proposal on this issue is the most reasonable.

J. In-Service Training

The Union proposed new language would establish an In-Service Training Committee which would review and consider Bargaining Unit employee training, including the types of training, the frequency and the method of employee selection for training. Their proposal would require the County to pay for all required certification and continuing education units.

There is a Linn County Employee Development Committee (LCEDC) in existence. This Committee currently consists of 11 persons, including two AFSCME members who have volunteered to participate, and meets regularly.

The Union states that the Fact Finder recommended the Employer language on this issue.

> *"The Union shall appoint three members of the Employee Development Committee. Permission to attend conferences and seminars directly related to an employee's work and for the purpose of obtaining necessary continuing education requirements or vocational certificates may be authorized by an elected official or department head, provided that work schedule permits and funding is available."*

The Fact Finder suggested that the Union participate on the Committee, evaluate the results and then assess whether this issue should be pursued during the next negotiations.

The County proposal would raise Union membership on the LCEDC to five, three of who could be appointed by the Union. That would leave six Members to be appointed by Management. The Committee would study methods of providing employee job training, particularly cross-training.

The present language of Article 27 provides that, in the event the employer requires In-Service Training of employees, such training can be considered work time and the employee paid accordingly.

Award

I adopt the County's final position in this matter. The County will staff the present 11-person Committee with additional AFSCME Members pursuant to the new contract language they propose in their final offer.. While the recommendations of that Committee are in no way binding on the Bargaining Unit, their more extensive participation will provide an increased opportunity for the Bargaining Unit to provide input into training considerations. Before negotiations next year, the Union will be able to judge, from their perspective, whether the Development Committee is a proper vehicle to adequately consider training needs in this Unit.

James R. Cox
Arbitrator

Issued this 10th day of April 2003.

CERTIFICATE OF SERVICE

I certify that on the 10th day of April 2003, I served the foregoing Award on each of the parties to this matter by mailing a copy to them at their respective addresses.

Trudy Elliott
Employee Relations Office
Linn County Administration Building
930 First Street SW
Cedar Rapids IA 52404 2161

Tom Anthony
AFSCME
1425 8TH Avenue SE
Dyersville, IA 52440

I further certify that on that same date, I served this Award for filing with the Iowa Public Employment Relations Board by mailing a copy to their offices at 514 East Locust, Suite 202 Des Moines, Iowa 50309-1912.

James R. Cox